The Senate of Texas
Committee on State Affairs

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November 16, 1993

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I.D.# 23305

RQ-630

Honorable Dan Morales, Esq.
Office of the Texas Attorney General
Post Office Box 12548
Austin, TX 78711-2548

Re: **Request for Attorney General Opinion: Question Presented:** ***Whether Home Rule City's Ordinance Regulating Alcohol-Related Premises, Permittees and Licensees Is Invalid Because Preempted By and In Conflict With the Texas Alcoholic Beverage Code and the Local Government Code.***

Dear General Morales:

On June 23, 1993, the City Council of the City of Dallas ("City") adopted a zoning ordinance,[1] Ordinance No. 21735 ("Ordinance") which, in attempting to circumvent the preemptive provisions of the Texas Constitution and the Texas Alcoholic Beverage Code ("TABC" or "Code"), appears to be both facially invalid and unlawful as enforced.

The Ordinance imposes impermissible restrictions and conditions on TABC licensees and permittees selling alcoholic beverages for off-premise consumption only. In particular, Ordinance No. 21735 fatally conflicts with the Code and the general laws of the State and, therefore, is invalid because unconstitutional, for reasons that include, but are not limited to the following:

1. The Ordinance undermines the Legislature and improperly regulates, by attempting to redefine, *off-premise* "Beverage Stores" and "Liquor Stores" as "on-premise"

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[1] In a nutshell, the Ordinance requires that any "establishment that will sell or serve alcoholic beverages" in Dallas, must do the following:

1. apply for a certificate of occupancy ("CO") on an approved City form; *see* Dallas City Code, as amended, Section 6-13 at § 2, amending Dallas Development Code, Chapter 51[A]-1.104(a);
2. comply with all applicable codes and ordinances before being issued a CO;
3. file an affidavit with the building official stating whether the "off-premise" TABC-licensed or -permitted establishment nonetheless "will derive 75 percent or more of its gross annual revenue from the *on-premise sale* of alcoholic beverages;" and
4. upon request, supply the City's building official with "*any records* needed to document the percentage of gross revenue on an annual basis derived from the *on-premise sale* of alcoholic beverages."

See Ordinance, at p. 9 (emphasis supplied) (a certified copy of the Ordinance is attached hereto as Appendix "A").

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establishments,[2] in a manner that is legally and logically inconsistent with the preemptive definitions and regulatory structure provided for by the Code.

2. Contrary to the City's misleading construction of the language "on-premise sale," this legislative term of art, as used in TABC § 109.57(d)(2), clearly applies only to the place of *consumption, not* of *sale*. Accordingly, this provision was not intended by the Legislature to authorize and, should not be construed as enabling, a home rule city to regulate at all, much less more severely than the Code, any TABC licensee or permittee that sells beer, wine or liquor for off-premise consumption.

3. The Ordinance unlawfully purports to regulate and *condition* the exercise of TABC licensees' or permittees' rights upon the *City's* initially certifying that the licensee complies with Code-preempted City regulations and then, only upon the City's wholly discretionary issuance of a CO and a Specific Use Permit ("SUP"), as additional yet improper preconditions to and restrictions on the licensees' and permittees' ability to engage in their alcohol-related occupations.

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[2] The Ordinance unlawfully provides that an "off-premise" TABC-permitted or -licensed "Beverage Store" will be regulated by the City *as if* it were an "on-premise" establishment and, contravening State law, is defined by the City as,

> An establishment for the retail sale of soft drinks, beer, wine, or liquor that is not to be consumed on the premises that derives 75 percent or more of its gross revenue on an annual basis from *on-premise sale* of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code.

See Appendix A, Ordinance, Section 3, ¶ 10, p. 12 (emphasis supplied). Similarly, the Ordinance improperly provides that an "off-premise" TABC-licensed or -permitted "Liquor Store" nonetheless will be regulated as an "on-premise" licensee, and defined as,

> An establishment principally for the retail sale of alcoholic beverages for off-premise consumption that derives 75 percent or more of its gross revenue on an annual basis from *on-premise sale* of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code.

See Ordinance, Section 3, ¶ 17, p. 15 (emphasis supplied).

I. The Constitution, TABC and Local Government Code Preempt The Ordinance's Inconsistent Regulation of Alcohol-Related Businesses.

By violating the preemptive definitions, legislative intent, and structure of the "on-premise/off-premise" statutory distinctions and regulatory structure of the Code and its exclusive licensing and permitting system and requirements, the Ordinance ignores the clear Texas Constitutional prohibition against a local government's enacting laws inconsistent with the Texas Constitution and the general laws enacted by the Legislature. *See* Tex. Const., art. XI, § 5, and art. 16, § 20.

In effect, the Ordinance improperly attempts to end-run Constitutional limits, the Code's clear language and, the Legislature's express intent to prohibit a home rule city from imposing any restrictions or conditions on the exercise of licenses and permits duly issued by the Texas Alcoholic Beverage Commission (the "Commission"),[3] which restrictions or conditions are inconsistent with, more severe than, or discriminatory under the regulatory terms of the Texas Alcoholic Beverage Code and the Local Government Code.[4]

The Office of the Texas Attorney General already and consistently has ruled that TABC § 1.06[5] "covers *every aspect of the regulation of alcohol.*" Op. Tx. Att'y Gen. No. LO-88-47

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[3] The Commission is a state agency (*see* TABC § 5.01) which has the statutory authority to exercise all powers, duties, and functions conferred by the Code. TABC § 5.31. It has the mandatory duty to inspect, supervise, and regulate *every* phase of the sale and distribution of alcoholic beverages. *Id.* The Code sets out that the Commission shall supervise and regulate licensees and permittees and their places of business in matters affecting the public. TABC § 5.33. Under the Code at § 5.35, only the Commission, *not* a home rule city, is authorized to grant, refuse, suspend, or cancel alcoholic beverage permits and licenses. Moreover, TABC Section 6.01(a) specifically states "a person may ... sell, ... transport, distribute, ... possess for the purpose of sale ... [alcoholic beverages] if the right or privilege of doing so is granted *by this code* and the person has first obtained a license or permit of the proper type as required by this code." (emphasis supplied).

[4] The Supreme Court recently rejected the City's argument that a home rule city could impose higher standards upon licensees and permittees than were mandated by State law. In *Dallas Merchant's v. City of Dallas*, 852 S.W.2d 489, 493 n. 7 (Tex. 1993), the Court ruled that TABC "Section 109.57(a) was by its terms enacted to exempt licensees and permittees from Section 211.013 of the Local Government Code."

[5] Section 1.06 of the Code provides:

> Unless otherwise specifically provided by the terms of this Code, the manufacture, sale, distribution, transportation and possession of alcoholic beverages shall be governed *exclusively* by the provisions of this code.

(emphasis supplied). Indeed, "[t]o give effect to this [preemptive] legislative intention, we [the Attorneys General of Texas] have broadly applied Section 1.06." *Id.* (section 1.06 preempts City of Galveston ordinance prohibiting alcohol consumption on certain public sidewalks), *citing* Op. Tx. Att'y Gen. No. JM-619 (1987) (Section 1.06 preempts ordinance prohibiting the consumption of alcoholic beverages by persons operating motor vehicles); and, Op. Tx. Att'y Gen. No. JM-112 (1983) (section 1.06 preempts ordinance banning open containers of alcoholic beverages in motor vehicles). Ordinance 21735, like the proposed ordinance criticized as invalid in Op. Tx. Att'y Gen. No. JM-619, improperly "regulates in a field which is not separate from the field regulated by Section 1.06 of the Code. It operates in the same field, but with more stringent proscriptions." *Id.* Such regulation in an occupied field by a home rule city is preempted. *Id.*

As the Attorney General previously acknowledged, by enacting section 109.57(b)[6] and amending the Code in 1987, the Legislature made its preemptive "intention unmistakable":

> "by legislative mandate, as set out in section 1.06 and section 109.57, the rules regarding regulation of alcoholic beverages are set forth *exclusively* by the Alcoholic Beverage Code. They *cannot be varied or supplemented by City Ordinance.*"

Op. Tx. Att'y Gen. No. LO-88-56, at 3 (holding that TABC § 1.06 preempts proposed City of Arlington ordinance that precludes a person under the age of twenty-one from entering a TABC-licensed establishment, unless accompanied by a parent or guardian).

Indeed, the Supreme Court, too, recently recognized the far-ranging significance of the constitutional prohibitions against inconsistent city ordinances and, the preemptive effect of TABC Section 1.06. In *Dallas Merchant's*, the Court found unmistakable legislative intent "clearly expressed in section 109.57(b) of the TABC," that the regulation of alcoholic beverages is exclusively governed by the Code," unless the Code itself provides otherwise. *Dallas*

TABC § 1.06 (Vernon Supp. 1993) (emphasis supplied).

[6] TABC Section 109.57(b) reads,

(b) It is the intent of the legislature that *this code shall exclusively govern the regulation of alcoholic beverages* in this state, and that except as permitted by this code, a *governmental entity of this state may not discriminate* against a business holding a license or permit under this code.

Id. (Vernon Supp. 1993) (emphasis supplied).

Merchant's, 852 S.W.2d 489, 491-92 (holding that TABC § 109.57, "clearly preempts" Dallas' home rule ordinance that regulates where alcoholic beverages are sold) (footnote omitted).

Against this background of the Legislature's occupying the field of alcoholic beverage regulation and, only *twenty days* after the Supreme Court overruled a motion for rehearing of its decision in *Dallas Merchant's* invalidating a previously enacted Dallas ordinance, the City nevertheless adopted the Ordinance now at issue. The Ordinance purports to enact several provisions regulating the sale and consumption[7] of beer, wine, and liquor

In the first instance, any such regulation by a home rule city is preempted by the Code. Secondly, any regulation that is more restrictive that the governing State law, is preempted by, because inconsistent with both the Local Government Code[8] and the TABC's exclusive regulatory definitions and provisions. Third, the Supreme Court's recent clarification in *Dallas Merchant's*, of the broad scope of the Legislature's clear intention to enact and amend the Code so as to preempt and limit a home rule city's regulation of alcoholic beverages and TABC licensees and permittees, weighs heavily in determining the Ordinance's invalidity.

II. Under The Code And Case Law, "On-Premise Sale" Means Sale Of Alcoholic Beverages For On-Premise *Consumption* And Not, Merely The Sale Of Alcohol On The TABC-Licensed Premise, But Without Regard To Its Lawful Place Of Consumption.

In attempting to justify the Ordinance's preempted regulation of TABC licensees and permittees, the City misplaces its reliance on the "on-premise sale" language that the City takes

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[7] By indirectly regulating consumption, the Ordinance also unlawfully regulates the "possession" of alcohol, as well. *See* Op. Tx. Att'y Gen. No. JM-112 (1983) ("to consume an alcoholic beverage, one must possess the beverage").

[8] Contemporaneous with the enactment of TABC Section 109.57 in 1987, the Legislature added the following provisions in Section 243.005(b) and (c) of the Local Government Code:

> (b) A regulation adopted under this chapter *may not discriminate* against a business on the basis of *whether the business holds a license or permit under the Alcoholic Beverage Code.*
>
> (c) This chapter does not affect the existing *preemption by the state of regulation of alcoholic beverages* and the alcoholic beverage industry as provided by Section 1.06, Alcoholic Beverage Code.

Id. (Vernon Supp. 1993) (emphasis supplied).

out of context from TABC § 109.57(d).[9] Simply put, the City maintains that by enacting Section 109.57(d)(2), the Legislature intended not only to amend the exclusive nature of § 109.57 preemption, but also to grant home rule cities the authority elsewhere denied them, *i.e.*, broadly to regulate *any* TABC licensee or permittee that derives 75 percent or more of its gross revenue from the on-premise sale of alcoholic beverages, apparently without regard to whether the alcohol sold is statutorily authorized to be consumed on or off the licensed premises.

As the legislative history reveals and, my esteemed colleague and the author of TABC § 109.57(d) explains, however, the TABC was amended in 1987, and again in 1991, in order to grant home rule cities the specific, but limited power, to regulate a narrowly defined class of sexually-oriented businesses and private bars where alcoholic beverages are *sold and served for consumption on the licensed premises*. *See* Letter of Rep. Ron Wilson, at 1 ("Rep. Wilson Letter"), attached as Appendix "B."

Moreover, the phrase "on-premise sale" as used in TABC § 109.57(d)(2), "does and can relate only to the *place* of *consumption*, but *not [the] sale* of alcoholic beverages." Wilson Letter, at 2 (emphasis supplied). *See also* Letter of former TABC General Counsel Joe Darnall, at 2 ("Darnall Letter"), attached as Appendix "C" ("As used in TABC § 109.57(d), 'ON-PREMISE' is a universally recognized term of art in alcoholic beverage law. It relates ONLY to the *PLACE OF CONSUMPTION, not the place of sale.*") (original emphasis).

In a blatant, if misguided attempt to bring off-premise package, convenience and liquor stores within the narrow ambit of TABC § 109.57(d), the Ordinance improperly grafts its own inconsistent definitions onto the well-settled statutory meaning and the Code's regulation of "on-premise" establishments.[10] Under the Code, "on-premise sale" does and can only mean the sale

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[9] TABC § 109.57(d) reads:

(d) This section does not effect the authority of a governmental entity to regulate, *in a manner as otherwise permitted by law*, the location of:

(1) a massage parlor, nude modeling studio, or other sexually oriented business; or
(2) an establishment that derives 75 percent or more of the establishment's gross revenue from the *on-premise sale* of alcoholic beverages.

Id. (Vernon Supp. 1993) (emphasis supplied).

[10] *Compare, e.g.*, the Code's regulation of off-premise and on-premise license and permit holders, at TABC § 26.01 "Wine and Beer Retailer's Off-Premise Permit," (The holder of a wine and beer retailer's off-premise permit may sell for off-premises consumption only ...."); § 26.01 "Wine and Beer Retailer's Off-Premise Permit,"

of beer, wine or alcoholic beverages *for consumption* on the permitted or licensed premises. Simply put, TABC § 109.57(d)(2) uses clear language to provide for the limited regulation by local government of only certain licensees and permittees that sell or serve alcoholic beverages for consumption on their premises.

Indeed, the Code's ascribed meaning and use of the phrase "on-premise," as legislative shorthand for "alcoholic beverage sales for consumption on the premises," is so clear that, under the Code, for example, package stores holding TABC "off-premise" licenses and permits expressly are forbidden from and punishable for selling or serving beer, wine or alcohol for on-premise consumption.[11]

Moreover, evidence of the Legislature's unmistakable intention to preserve the Code's on/off premise structure and definitional preemption and, to preclude any *off-premise* permittees' alcoholic beverage *sales* from being misconstrued or counted as "*on-premise sales*," is found in the most recent Legislative Session's amendment of the TABC, at Section 52.01, *et seq.*, creating a "Package Store Tasting Permit."

By enacting TABC Chapter 52, the Legislature clearly provided that an off-premise package store's permit, *e.g.*, "may *not* be considered a permit authorizing the sale of alcoholic beverages for on-premise consumption." TABC § 52.03 (emphasis supplied). Importantly, the Legislature also provided that "for purposes of this code and any other law of the state or *political subdivision of the state*," no revenue earned by package stores "may be deemed to be *revenue derived from the 'on-premise sale' of alcoholic beverages*." *Id.* (emphasis supplied). (A true and correct copy of the TABC §§ 52.01-52.03 is attached hereto as Appendix "D".)

In the express and representative terms of this newest permit classification then, the Legislature yet again, clearly mandates its unmistakable intention that no local government may "deem" revenue derived by off-premise permittees as "on-premise sale" revenue, nor regulate TABC licensees and permittees on the basis of what the City improperly deems to be " on-

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and § 71.01 "Retail Dealer's Off-Premise License," ("holder of retail dealer's off-premise license may sell beer in lawful containers to consumers, but not for resale and not to be opened on or near the premises where sold") *with* Section 28.01(a) (mixed beverage permit holder "may sell, offer for sale, and possess mixed beverages, including distilled spirits, for consumption on the licensed premises" *and* § 70.01 "Retail Dealer's On-Premise Late Hours License" (holder may sell beer for consumption on the premises).

[11] *See, e.g.*, TABC § 22.10 (prohibits possession of open container of liquor or beer on the premises of a package store); and § 71.10(a) (each holder of a retail dealer's off-premise license must prominently display a sign stating: "IT IS A CRIME (MISDEMEANOR) TO CONSUME LIQUOR OR BEER ON THESE PREMISES" (original emphasis).

premise sale" revenue. Together with Section 1.06, these preemptive Code regulations governing package, liquor, and convenience stores starkly illuminate the invalidity of the inconsistent Ordinance which improperly attempts both to mischaracterize or re-classify any revenue derived from the alcohol sales of off-premise package store permittees, *e.g.*, as revenue derived from "on-premise sales" and, unlawfully to regulate off-premise licensees and permittees.

In short, the Ordinance's validity is wholly premised on the absurd notion that by enacting TABC § 109.57(d)(2), the Legislature thereby, intended to allow home rule cities the unfettered power to impose *conditions* on the exercise of TABC licensees and, extensively to regulate any off-premise package, convenience or liquor store that derives 75 percent or more of its sales, from the very sale of the beer, wine, or liquor that the store is permitted or licensed to sell, under the Code, in the first place.

By misplacing its reliance on a single phrase, "on-premise sale," taken out of context, the City attempts in vain to bypass the preemptive mandate of TABC § 109.57. But § 109.57(d)(2), when properly read and construed together with the other sub-sections of TABC § 109.57[12] and the preemptive exclusivity of TABC Section 1.06, can be seen not as a broad license, but rather as only a limited legislative grant to local governments to regulate bars, taverns, and private clubs that sell and serve alcoholic beverages for on-premise *consumption*.

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[12] § 109.57 "Application of Code; Other Jurisdictions," reads, in part,

(a) Except as is expressly authorized by this code, a regulation, charter, or ordinance promulgated by a governmental entity of this state *may not impose stricter standards on premises or businesses required to have a license or permit under this code* than are imposed on similar premises or businesses that are not required to have such a license or permit.

(b) It is the intent of the legislature that *this code shall exclusively govern the regulation of alcoholic beverages* in this state, and that except as permitted by this code, a *governmental entity of this state may not discriminate* against a business holding a license or permit under this code.

(c) Neither this section nor Section 1.06 of this code affects the validity or invalidity of a zoning regulation that was formally enacted before June 11, 1987, and that is otherwise valid, or any amendment to such a regulation enacted after June 11, 1987, if the amendment *lessens the restrictions on the licensee or permittee or does not impose additional restrictions on the licensee or permittee*. For purposes of this subsection, "zoning regulation" means any charter provision, rule, regulation, or other enactment governing the location and use of buildings, other structures, and land.

Id. (Vernon Supp. 1993) (emphasis supplied).

III. The Ordinance Improperly Imposes Conditions and Restrictions on TABC Licensees and Permittees That Are Preempted By, More Severe Than, or Otherwise In Conflict With The Code.

The Ordinance unlawfully imposes improper or discriminatory conditions and regulations on package, convenience and liquor stores, which conditions and regulations are not imposed either on certain City-exempted categories of TABC-licensed businesses (in violation of TABC § 109.57(a)) or, on non-TABC-licensed and -permitted businesses (in violation of TABC § 109.57(b)). *See Dallas Merchant's*, 852 S.W.2d 489, 493 n. 7.

In the latter instance, the Ordinance impermissibly discriminates against certain TABC-licensed businesses by requiring only TABC permittees and licensees to apply for COs and to secure SUPs, but not applying the same discriminatory procedures to similar retail establishments that are not licensed to sell alcoholic beverages under the Code. *See, e.g.*, Local Gov't Code § 243.005; TABC §§ 109.57(a) and (b); *Dallas Merchant's*, 852 S.W.2d 489, 493.

In the first instance, the Ordinance explicitly and discriminatorily requires *certain* classes of TABC permittees and licensees, but not others, to apply, pay $600 for, attend two public hearings on and, attempt to comply with the onerous requirements in order to secure a "Specific Use Permit" from the City, as an express, but arbitrary and unlawful, "*condition* to engage upon the occupation of dispensing alcoholic beverages." *See Banknote Club v. City of Dallas*, 608 S.W.2d 716, 718 (Tex. Civ. App.--Dallas 1980, *writ ref'd n.r.e.* (original emphasis). This type of "obstruction, interference or burden upon a permittee in the exercise of his permit," 608 S.W.2d 716, 718-19, is precisely the type of unlawful regulation and condition, however, that the courts invalidate and which the Legislature intended to prohibit a home rule city from enacting. (A true and correct copy of the City's SUP Application Regulations is attached as Appendix "E").

Thus, in applying for a CO, in filing affidavits and producing confidential records that "verify" that off-premise sales of alcohol under the Code nonetheless inconsistently count as "on premise sales" under the Ordinance, the City thereby improperly attempts to require the TABC-licensed establishments to *reject* preemptive TABC definitions and provisions and instead, to adopt the *City's* "on premise" definition (which is inconsistent with the Code's) as an unlawful precondition to applying for a CO and SUP.

In an effort to force licensees either to be declared non-conforming and, upon the filing of a citizen's complaint, to cease business operations altogether or, to forego the preemptive definitions and protection of the TABC, the Ordinance mandates that off-premise TABC-licensees must, in effect, define themselves out of existence by improperly declaring themselves

to be within the ambit of § 109.52(d)(2). Thus, the Ordinance improperly attempts to require off-premise package stores and liquor stores to affirm by affidavit that they are subject to and in compliance with *City* regulations that are inconsistent with the Code's, concerning alcoholic beverages sold for on-premise consumption. This attempt by the City to subject these establishments to definitions, standards, self-declarations, and City "certification" inconsistent with State law, renders the Ordinance void and invalid. (True and correct copies of the City's Affidavits required by the Ordinance to be filed by TABC licensees and permittees are attached hereto as Appendix "F.") *See Dallas Merchant's*, 852 S.W.2d 489, 493 (ordinance can only require withholding of City certification, under TABC § 61.37, when alcoholic beverage sale is proscribed "in a manner allowed by the TABC.").

In addition to the Ordinance's unlawful attempt to expand the scope of TABC § 109.57(d) by regulating "off-premise" establishments, the Ordinance also is unconstitutional because it impermissibly discriminates *among* TABC-permittees and licensees and, thus, conflicts with the TABC and the Local Government Code by, *e.g.*, arbitrarily exempting hotels, motels and restaurants from its operation, but imposing discriminatory regulations on package and liquor stores, for example.

From a policy standpoint, no matter how laudable the local government's inspiration for regulating TABC permittees or licensees, the sound policy rationale behind the preemptive provisions of the Constitution and, the clear intent of the TABC and the Local Government Code precludes local regulation of the type enacted by the Ordinance. As General Mattox explained in finding preemption:

> The proposed ordinance attempts to effect the laudable goal of preventing accidents caused by the consumption of alcoholic beverages by drivers of motor vehicles by prohibiting the consumption of any alcoholic beverage. But in so doing, the *ordinance enters a field regulated exclusively by Section 1.06 of the Alcoholic Beverage Code*. If this more stringent goal is to be effected, *it must be effected through amendments to State statutes*.

Id. See generally Op. Tex. Att'y Gen. No. JM-229, at 3 (1993) (Houston's proposed ordinance, requiring condom sales on business premises licensed for sale of alcoholic beverages for on-premise consumption, is preempted by State law, notwithstanding the City's goal of reducing risk of sexually transmitted disease by increasing availability of condoms).

Especially in light of the recent *Dallas Merchant's* ruling striking down another Dallas ordinance because of the Code's exclusive regulation in this area and, given the precedential authority of Texas Attorneys General Opinions finding preemption, there no longer is legitimate

room for doubt about the preemptive and exclusive effect of the Texas Alcoholic Beverage Code's regulation of its permittees and licensees or, the strength of the Constitutional, the TABC's, and the Local Government Code's unmistakable prohibitions against a home rule city's enacting ordinances inconsistent with State law governing TABC licensees and permittees. *See, e.g.*, Op. Tx. Att'y Gen. No. DM-229, at 3 ("The Texas Supreme Court's interpretation of subsection (a) of section 109.57 in *Dallas Merchant's* compels us to conclude that the proposed ordinance would be preempted.").

Finally, the Ordinance also may be declared invalid on the following additional grounds:

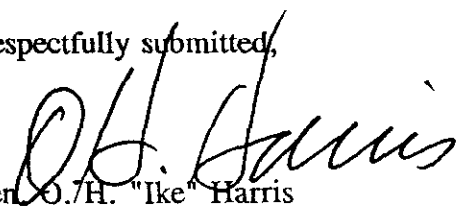
1. The Ordinance is a subterfuge designed to allow the City impermissibly to prohibit the sale of alcoholic beverages for *off*-premise consumption in *commercially-zoned* areas. TABC § 109.31 only permits a city, by *charter*, but not by ordinance, to regulate the sale of *liquor* in all or part of the residentially-zoned area, but not in commercial sections of a city; and

2. The Ordinance purports to regulate *all* alcoholic beverages, not just beer, whether sold in residential or commercial areas, and whether for on-premise or off-premise consumption. But TABC § 109.32 only permits a city to "regulate" the sale of *beer* in a *residential* area. The Ordinance and the SUP process however, are used not merely to regulate, but unlawfully to *prohibit* the sale of beer in *commercial* areas.

Given the City's imminent enforcement of this Ordinance and, the urgency of protecting hundreds of Dallas businesses licensed and permitted under the Code to sell alcoholic beverages for off-premise consumption, from the reach of unlawful City regulation threatening their demise, I would ask that you urge the Opinion Committee promptly to determine the invalidity of the Ordinance.

If my staff or I can provide any additional information or explanation in support of this Opinion Request, then please contact me at your earliest convenience.

Respectfully submitted,



Sen. O.H. "Ike" Harris

OHH:vw
cc: Madeleine B. Johnson, Esq.
Chair, Opinion Committee
Office of the Texas Attorney General